



COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

COURT (CHAMBER)

CASE OF SWEDISH ENGINE DRIVERS' UNION v. SWEDEN

(Application no. 5614/72)

JUDGMENT

STRASBOURG

6 February 1976

In the case of the Swedish Engine Drivers' Union,

The European Court of Human Rights, sitting, in accordance with Article 43 (art. 43) of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as "the Convention") and Rules 21 and 22 of the Rules of Court, as a Chamber composed of the following judges:

MM. G. BALLADORE PALLIERI, *President*,

H. MOSLER,

J. CREMONA,

G. WIARDA,

P. O'DONOGHUE,

Mrs. H. PEDERSEN,

Mr. S. PETREN,

and also Mr. M.-A. EISSEN, *Registrar*, and Mr. H. PETZOLD, *Deputy Registrar*,

Having deliberated in private on 26 September 1975 and 19 January 1976,

Delivers the following judgment which was adopted on the last-mentioned date:

PROCEDURE

1. The case of the Swedish Engine Drivers' Union was referred to the Court by the European Commission of Human Rights (hereinafter referred to as "the Commission"). The case originated in an application against the Kingdom of Sweden lodged with the Commission by the Swedish Engine Drivers' Union on 6 July 1972.

2. The Commission's request, to which was attached the report provided for under Article 31 (art. 31) of the Convention, was lodged with the registry of the Court on 7 October 1974, within the period of three months laid down by Articles 32 para. 1 and 47 (art. 32-1, art. 47). The request referred to Articles 44 and 48 (art. 44, art. 48) and to the declaration made by the Kingdom of Sweden recognising the compulsory jurisdiction of the Court (Article 46) (art. 46). The purpose of the Commission's request is to obtain a decision from the Court as to whether or not the facts of the case disclose a failure on the part of the Kingdom of Sweden to comply with the obligations binding on it under Articles 11, 13 and 14 (art. 11, art. 13, art. 14) of the Convention.

3. The President of the Court deemed it conducive to the proper administration of justice to constitute a single Chamber to consider both the present case and the Schmidt and Dahlström case (Rule 21 para. 6). On 15

October 1974, the President of the Court drew by lot, in the presence of the Registrar, the names of five of the seven judges required to sit as members of the Chamber, Mr. S. Petrén, the judge of Swedish nationality, and Mr. G. Balladore Pallieri, the President of the Court, being *ex officio* members under Article 43 (art. 43) of the Convention and Rule 21 para. 3 (b) of the Rules of Court respectively. The five judges so selected were Mr. H. Mosler, Mr. E. Rodenbourg, Mr. A. Favre, Mr. G. Wiarda and Mr. P. O'Donoghue (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43). Mr. Favre died in November 1974 and Mr. Rodenbourg in October 1975; they were replaced by Mr. J. Cremona and Mrs. H. Pedersen, substitute judges.

Mr. Balladore Pallieri assumed the office of President of the Chamber in accordance with Rule 21 para. 5.

4. The President of the Chamber ascertained, through the Registrar, the views of the Agent of the Swedish Government (hereinafter referred to as "the Government") and of the delegates of the Commission regarding the procedure to be followed. By an Order of 31 October 1974, the President of the Chamber decided that the Government should file a memorial within a time-limit expiring on 14 February 1975 and that the delegates should be entitled to file a memorial in reply within two months of receipt of the Government's memorial.

The Government's memorial was received at the registry on 17 February, and that of the delegates on 26 March 1975.

On 9 April 1975, the Government lodged a document with the registry.

5. After consulting, through the Registrar, the Agent of the Government and the delegates of the Commission, the President decided by an Order of 2 June 1975 that the oral hearings should open on 23 September.

6. On 22 September 1975, the Court held a preparatory meeting to consider the oral stage of the procedure. On this occasion the Court compiled a list of questions which it sent to the persons appearing before it, requesting them to supply the required information in the course of their addresses.

7. The oral hearings were held in public at the Human Rights Building in Strasbourg on 23 and 24 September 1975.

There appeared before the Court:

- for the Government:

Mr. H. DANELIUS, Head of the Legal Department

at the Ministry for Foreign Affairs,

Agent;

Mr. B. HÅRDEFELT, Chief Legal Adviser

at the Ministry of Finance,

Mr. G. NORMARK, Chief Legal Adviser

at the National Collective Bargaining Office,

Mr. O. BERGQVIST, Legal Adviser

at the Ministry of Labour,

Advisers;

- for the Commission:

Mr. J. E. S. FAWCETT,

Mr. J. CUSTERS,

Mr. F. SCHMIDT, Professor

at the University of Stockholm, and

Mr. K. NORSTRÖM, who had represented the applicant

before the Commission, assisting the delegates under Rule 29 para. 1, second sentence.

Principal Delegate,

Delegate,

The Court heard the addresses of Mr. Fawcett, Mr. Schmidt and Mr. Norström for the Commission and Mr. Danelius for the Government, as well as their replies to questions put by the Court and one judge.

The Commission produced a document during the oral hearings.

AS TO THE FACTS

8. The Swedish Engine Drivers' Union (Svenska Lokmannaförbundet) is a trade union founded in 1958 with its head office in Stockholm. It is open to the five to six thousand employees of the Swedish State Railways who are either crewmen or personnel from among whom crewmen are recruited. Its membership rose from some 700 in 1969 to 1,200 in 1974, then dropped to 1,100 in September 1975. Thus the applicant union comprises between 20% to 25% of the eligible railway personnel, by far the majority of whom - 75% to 80% - belong to the Railwaymen's Section of the State Employees' Union (Statsanställdas Förbund - SF), one of the three principal federations of Swedish State employees.

9. The applicant union is an independent trade union. It complains that the Swedish National Collective Bargaining Office (Statens Avtalsverk, hereinafter referred to as "the Office") concluded collective agreements on terms of employment and conditions of work only with the said federations. It maintains that this policy has led to stagnation and a drop in its own membership; the Government challenges these statements.

General background

10. For more than a hundred years, workers and employers in the private sector in Sweden have traditionally enjoyed the right to form and join trade unions and to take action in defence of their occupational interests without interference by the State.

Certain principles of labour law which had evolved in practice were codified in 1928 and 1936 by the following legislation:

(i) the 1928 collective Agreements Act (lag om kollektivavtal);

(ii) the 1928 Labour Court Act (lag om arbetsdomstol); and

(iii) the 1936 Act on the Right to Organise and Negotiate (lag om förenings-och förhandlingsrätt).

11. The 1928 Collective Agreements Act deals with collective labour agreements between employers or employers' associations and trade unions. It specifies in particular the legal effects of such agreements. For example, the parties may not take strike or lock-out action in regard to an issue regulated by a collective agreement in force between them.

12. The 1928 Labour Court Act contained rules governing the composition, jurisdiction and procedure of the Labour Court.

The Labour Court was competent to hear cases of alleged violation of the 1936 Act on the Right to Organise and Negotiate. It also had jurisdiction in disputes relating to the interpretation and application of collective agreements, but proceedings could only be brought by a party to the agreement in issue. Unions or non-union employees to whom such an agreement had been made applicable (paragraph 17 below) were obliged to bring their disputes before the ordinary courts or administrative courts, as the case might be.

13. The above-mentioned 1936 Act guarantees two distinct rights to the parties on the labour market, namely the right to organise and the right to negotiate.

The right to organise is defined in section 3 of the Act as the right of employers and employees to belong to an employers' organisation or a trade union, to exercise their rights as members of that organisation or union, and to work for an organisation or a union or for the formation of an organisation or a union, without interference or pressure by the other party. The Act specifies that the right to organise shall be considered as being violated "if measures are taken either by employers or by employees to constrain any employee or employer, as the case may be, to refrain from becoming a member of, or to resign from, an association, to refrain from exercising his rights as a member of an association, or to refrain from working for an association or for the formation of an association, and likewise if measures are taken either by employers or by employees calculated to cause prejudice to an employee or employer, as the case may be, on the ground that such employee or employer is a member of an association, exercises his rights as a member of an association or works for an association or for the formation of an association".

The only way in which such associations enjoy the protection of the Act is that they may be awarded damages if the other party violates the right to organise of an individual member in such a way that the violation is to be regarded as interference in the affairs of the association.

The right to negotiate is defined in section 4 of the 1936 Act as "the right to institute negotiations regarding conditions of employment or relations between employers and employees in general". It imposes on the other party an obligation to enter into negotiations, to attend meetings for negotiations and, where necessary, to make proposals for the settlement of the issues involved. This provision is applicable to all trade unions including the

applicant union. As the Labour Court ruled in 1972 (see paragraph 29 below), this does not mean that the negotiation must lead to the conclusion of an agreement even where the substantive terms are not in dispute.

14. Prior to 1966, the State determined the wages and conditions of employment of its employees in the event of a breakdown of the negotiations between the State and the employees.

As from 1 January 1966, the 1965 State Officials Act (statstjänstemanalag) has virtually assimilated State employees to employees in the private sector as regards trade union rights, strikes, lock-outs, etc. The Act made the 1928 Collective Agreement Act, the 1928 Labour Court Act and the 1936 Act on the Right to Organise and Negotiate applicable in the public sector. Furthermore, the Act provided for collective agreements to be concluded, subject to certain exceptions, between the Office, representing the State as employer, and the organisations of State employees. The Ministry of Finance has a nominee on the governing board of the Office.

15. The 1965 legislative reform was facilitated by the centralised structure of the Swedish trade union movement; one factor that contributed much to its adoption was the conclusion in December 1965 of a Basic Agreement on Negotiations' Procedure (slottsbacksavtalet) between the Office and the four main organisations of State employees, namely:

(i) the State Employees' Union (Statsanställdas Förbund, abbreviated to SF and known prior to 1 July 1970 as Statstjänarkartellen);

(ii) the National Federation of State Employees (Statstjänstemännens Riksförbund, abbreviated to SR);

(iii) the Swedish Confederation of Professional Associations (Sveriges Akademikers Centralorganisation, abbreviated to SACO);

(iv) the Civil Servants' Section of the Central Organisation of Salaried Employees (Tjänstemännens Centralorganisations Statstjänstemannasektion, abbreviated to TCO-S).

According to the information at the disposal of the Court, these federations, of which numbers (ii) and (iii) recently merged, represent the large majority of Swedish State employees: more than 450,000 out of the 500,000 whose terms of employment are negotiated by the Office. About forty trade unions are affiliated to these organisations. The few independent trade unions, including the applicant, represent only about 2,000 State employees in all.

16. Clause 4 of the above-mentioned Basic Agreement provides that negotiations with a view to concluding a collective agreement shall be conducted on the employees behalf by the "main organisation" concerned, unless the Office and the "main organisation" agree otherwise. A note is appended stating that it is not thereby intended to depart from the earlier practice observed in regard to negotiations with a particular association as to any question which exclusively concerns that association.

One exception was made to this rule in the case of the Association of Physicians (Sveriges Läkareförbund); some other exceptions have been or are made from time to time. For instance, in April 1974, the State concluded a separate collective agreement with an independent union of forestry workers. The Government and the applicant union disagree about the circumstances surrounding the making of such exceptions.

17. The Royal Order of 30 June 1965 relating to Certain Public Collective Agreements (KK om vissa statliga kollektivavtal m.m.) includes the following provisions:

Article 3

"Collective agreements as to such conditions of employment or service as are determined by the King-in-Council or by Parliament shall be concluded conditionally on the agreement being sanctioned by the King-in-Council."

Article 4

"An Authority which is bound by a collective agreement shall apply the provisions of the agreement to any employee within the occupational group and region to which the agreement refers, notwithstanding that the employee is not covered by the agreement or by any other applicable collective agreement."

18. Certain forms of employees' representation are confined to parties to a collective agreement. Thus, the applicant union complains, inter alia, of being disqualified from representation on the Central Works Council of the Swedish State Railways established by Royal Order of 1968, on the Working Hours Council established by the King-in-Council, and on the Works Committees. The applicant further complains that it cannot appoint official trade union representatives under the Act of 31 May 1974 on the Status of Trade Union Representatives at the Place of Work (lagen om facklig förtroendemanns ställning på arbetsplatsen), or safety inspectors under Article 40 of the 1949 Workers' Protection Act, as amended on 16 November 1973 (lagen om ändring i arbetarskyddslagen).

19. The law described above at paragraphs 10 to 18 has in recent years undergone various changes. Thus, trade union rights in both the public and private sectors have been embodied in the new Swedish Constitution which came into force on 1 January 1975. In addition, the Act of 31 May 1974 on the Procedure for the Settlement of Labour Disputes (lag om rättegången i arbetsvister) has replaced the 1928 Labour Court Act. Since 1 July 1974, the new Act has enabled any trade union, whether a party to a collective agreement or not, to bring before the Labour Court any dispute relating to the interpretation or application of such an agreement.

Facts of the particular case

20. Between 1 July 1966 and 31 December 1968, the terms of employment and conditions of work of State employees were governed by a

collective agreement concluded by the Office and the four federations. The applicant was not affiliated to any of these federations, but the collective agreement was made directly applicable to it by an accessory agreement which the Office concluded with the applicant on 22 September 1966.

On 8 July 1968, the applicant indicated that it wished to terminate the accessory agreement as from the end of 1968 and it asked for negotiations regarding a new agreement, indicating certain general guidelines for the negotiations.

On 18 November 1968, the applicant union submitted more detailed demands regarding the terms of employment of its members and again asked for negotiations which were to start at the same time as the negotiations with other comparable unions. This request was repeated in February and March 1969.

In February and March 1969, the Office held exploratory meetings with the four federations and provided them with certain proposals regarding the terms of employment which were to apply to State employees in 1969 and 1970. Following these meetings, the Office also held a meeting with the applicant on 27 March 1969. On this occasion, the Office and the applicant union examined the demands formulated by the union in its letter of 18 November 1968. The Office also handed over the proposals which it had previously presented to the four federations. These proposals concerned all State employees, including engine drivers. Finally, the Office declared that it did not intend to conclude a collective agreement with the applicant for the years 1969 and 1970, nor even an accessory agreement such as that concluded in 1966. It stated, however, that it was prepared to continue discussing engine drivers' terms of employment with the applicant union.

On 28 March 1969, the applicant union asked the Office to reconsider its refusal to conclude a separate agreement with the union, but the Office replied on 24 April that it maintained its previous position.

According to the Government, the new attitude of the Office which, even after the 1965 reform, had concluded accessory agreements with the applicant and other independent trade unions, could be explained by the fact that in Sweden, at the end of 1968 and in 1969, the trade union structures in the public sector were tending to disintegrate.

21. On 27 April 1969, the applicant union proclaimed a strike and a blacklisting of jobs as from 9 May. After certain legal and other questions regarding the strike and the blacklisting of jobs had been discussed in writing and orally between the Office and the applicant, the Office decided on 5 May 1969 to proclaim a lock-out of members of the applicant union as from 13 May 1969.

The strike and the blacklisting became effective on 9 May 1969 but were cancelled as from 11 May. Consequently, the lock-out did not become effective. However, in retaliation against the strike action, the State refused to apply retroactively to the members of the applicant union a new

agreement concluded with the federations on 12 July 1969. This caused each member of the applicant union a loss of 400 to 600 Swedish Crowns. Proceedings brought in the name of one of the applicant's members concerning this dispute ended on 2 October 1973 by a judgment of the Supreme Court of Sweden dismissing the applicant's claim.

22. On 16 June 1969, the Office transmitted to the applicant a copy of the final proposal made in the course of its negotiations with the four federations. At a meeting on 7 July 1969, the applicant requested the Office to conclude with it an agreement which – apart from certain clauses - would be identical with the agreement to be concluded with the four federations. The Office rejected this proposal.

23. On 12 July 1969 the Office concluded with the four federations a general collective agreement for the years 1969 and 1970. In principle, the agreement applied to all State employees, including engine drivers. In accordance with Article 4 of the Royal Order relating to Certain Public Collective Agreements, the application of this agreement was extended to the members of the applicant union.

24. At a meeting on 21 October 1970, the latter submitted to the Office its demands for the period beginning 1 January 1971. The applicant union also raised the question of a separate agreement. A further meeting was held on 19 November 1970 at which the demands presented by the applicant on 21 October 1970 were examined in detail.

25. By letters of 14 January and 5 February 1971, the applicant union reverted to the question of a separate agreement, but the Governing Board of the Office decided on 19 February to maintain its refusal to conclude such an agreement with the union.

26. Negotiations between the Office and the applicant union took place at three further meetings on 26 February, 10 March and 26 April 1971. At these meetings the Office and the applicant discussed the terms of employment of engine drivers, and the Office informed the union about proposals which had been presented during the negotiations between the Office and the four federations.

27. On 28 June 1971, the Office concluded a general collective agreement with two of the four federations, namely SF and TCO-S. This agreement regulated the terms of employment of State employees, including engine drivers, for the period 1971-1973. Under Article 4 of the Royal Order of 1965, this general agreement became applicable to the members of the applicant union as well as to the members of the other two federations.

28. On 18 June 1971, the applicant union introduced proceedings against the State before the Labour Court, seeking a declaration that the Office was obliged to enter into negotiations with a view to concluding a collective agreement with the applicant union, and also to conclude such an agreement with the applicant union if the parties were in accord on the substantive issues.

The applicant union referred to Sections 3 and 4 of the 1936 Act on the Right to Organise and Negotiate. The union also invoked Article 16 of the Swedish Constitution then in force, some general principles of Swedish law and a number of international instruments including the European Convention on Human Rights.

The Labour Court dismissed the applicant's claim in a lengthily reasoned judgment delivered on 18 February 1972. The Court held that Section 4 of the 1936 Act neither debarred a party from declaring at the outset of negotiations that it would not conclude an agreement, nor implied an obligation to conclude an agreement following negotiations. The Court added that Section 3 of the same Act did not afford trade union organisations any protection in their own right.

The Labour Court noted that the international instruments relied on could serve to clarify Swedish law: while they had not been incorporated into Swedish law, it must be assumed that Swedish law intended to respect them. Nevertheless, the Court found that the submissions on this point in the instant case did not cause it to alter its judgment on the questions in dispute.

29. On several subsequent occasions, the applicant union attempted unsuccessfully to secure the conclusion of a collective agreement; its latest attempt was in March 1975.

30. In its application lodged with the Commission on 6 July 1972, the applicant union alleged violation of Articles 11, 13 and 14 (art. 11, art. 13, art. 14) of the Convention.

The Commission declared the application admissible on 20 July 1972.

31. In its report on 27 May 1974 the Commission expressed the unanimous opinion:

- that the conduct of the Office might in principle raise an issue under Article 11 (art. 11) of the Convention, even if the Office were fulfilling typical employer functions,
- that the refusal by the respondent Government to enter into collective agreements with the applicant did not violate Article 11 para. 1 (art. 11-1) as such;
- that the different treatment of the applicant and the federations with regard to the enjoyment of the freedom of association was reasonably and objectively justified and did not therefore contravene Article 11 read in conjunction with Article 14 (art. 14+11);
- that Article 13 (art. 13) had not been violated in the present case.

The report contains a separate concurring opinion shared by four other members of the Commission.

AS TO THE LAW

32. The Swedish Engine Drivers' Union complains of the refusal by the National Collective Bargaining Office during the past few years to enter into collective agreements with it notwithstanding that it does so with the large trade union federations and, occasionally, with independent unions. According to the applicant union, this refusal has entailed for the union, and is still entailing, a series of disadvantages, in particular as regards the opportunity to appoint official trade union representatives (Act of 31 May 1974), safety inspectors (Act of 16 November 1973) and representatives on various committees, such as the Central Works Council of the Swedish State Railways. Before the entry into force of the Act of 1 July 1974, the said refusal had the further effect of restricting the union's access to the Labour Court (paragraphs 12 and 19 above). It was submitted that the policy of the Office is intended to weaken and even to crush the applicant union by encouraging engine drivers and the other employees concerned to leave or to refrain from joining the union. On these various points, violation was alleged of Article 11 (art. 11) of the Convention, considered both on its own and in conjunction with Article 14 (art. 14+11).

The respondent Government is in addition alleged to have infringed Article 13 (art. 13) by failing to incorporate the Convention into Swedish law.

33. Having come to the conclusion that no such breaches had occurred, the Commission referred the case to the Court, emphasising the importance of the questions that arose therein on the interpretation and application of the Convention.

34. In their memorial, the delegates of the Commission have pointed out that the Swedish Engine Drivers' Union has lodged with the Commission a second application which is still pending. The Court cannot settle in the present judgment any new question that might be raised in the latter application.

I. AS TO THE ALLEGED VIOLATION OF ARTICLE 11 (art. 11)

35. Article 11 para. 1 (art. 11-1) of the Convention reads: "Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests."

36. In its main submission, the Government maintained that, generally speaking, the primary purpose of the Convention is to protect the individual against the State as holder of public power, but that the Convention does not oblige the State to ensure compliance with its provisions in private law relations between individuals. Article 11 (art. 11), it was contended, provides no departure from this rule. Furthermore, the applicant union was

attacking not the Swedish legislative, executive or judicial authorities, but rather the National Collective Bargaining Office and thus the "State as employer". In the sphere of work and employment conditions, the Convention cannot impose upon the State obligations that are not incumbent upon private employers.

According to the Commission, on the other hand, the disputed policy pursued by the Office may in principle be challenged under Article 11 (art. 11), even if the Office fulfils typical employer functions.

37. The Convention nowhere makes an express distinction between the functions of a Contracting State as holder of public power and its responsibilities as employer. In this respect, Article 11 (art. 11) is no exception. What is more, paragraph 2 (art. 11-2) in fine of this provision clearly indicates that the State is bound to respect the freedom of assembly and association of its employees, subject to the possible imposition of "lawful restrictions" in the case of members of its armed forces, police or administration.

Article 11 (art. 11) is accordingly binding upon the "State as employer", whether the latter's relations with its employees are governed by public or private law. Consequently, the Court does not feel constrained to take into account the circumstance that in any event certain of the applicant's complaints appear to be directed against both the Office and the Swedish State as holder of public power. Neither does the Court consider that it has to rule on the applicability, whether direct or indirect, of Article 11 (art. 11) to relations between individuals *stricto sensu*.

38. The majority of the Commission has expressed the opinion that included amongst the elements of the right protected by Article 11 para. 1 (art. 11-1) of the Convention are the right for trade unions to engage in collective bargaining and the legal capacity to conclude collective agreements in the interest of their members.

The Court finds that neither this right nor this capacity are at issue: both are granted to the applicant union under Swedish law (the 1928 Collective Agreements Act and the 1936 Act on the Right to Organise and Negotiate, read in conjunction with the 1965 State Officials Act), and the union does not claim to have been denied either of them.

39. On the other hand, it has to be ascertained whether Article 11 para. 1 (art. 11-1) requires the "State as employer" to enter into any given collective agreement with a trade union representing certain of its employees whenever the parties are in accord on the substantive issues negotiated upon.

The Court notes in this connection that while Article 11 para. 1 (art. 11-1) presents trade union freedom as one form or a special aspect of freedom of association, the Article (art. 11) does not secure any particular treatment of trade unions, or their members, by the State, such as the right that the State should conclude any given collective agreement with them. Not only

is this latter right not mentioned in Article 11 para. 1 (art. 11-1), but neither can it be said that all the Contracting States incorporate it in their national law or practice, or that it is indispensable for the effective enjoyment of trade union freedom. It is thus not an element necessarily inherent in a right guaranteed by the Convention.

In addition, trade union matters are dealt with in detail in another Convention, also drawn up within the framework of the Council of Europe, namely the Social Charter of 18 October 1961. Under Article 6 para. 2 of the Charter, the Contracting States "undertake ... to promote, where necessary and appropriate, machinery for voluntary negotiations between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements". As the Government and the Commission rightly emphasised, the Charter thus affirms the voluntary nature of collective bargaining and collective agreements. The prudence of the wording of Article 6 para. 2 demonstrates that the Charter does not provide for a real right to have any such agreement concluded, even assuming that the negotiations disclose no disagreement on the issue to be settled. Besides, Article 20 permits a ratifying State not to accept the undertaking in Article 6 para. 2. Thus, it cannot be supposed that such a right derives by implication from Article 11 para. 1 (art. 11-1) of the 1950 Convention, which incidentally would amount to admitting that the 1961 Charter took a retrograde step in this domain (cf. *mutatis mutandis*, paragraph 38 of the National Union of Belgian Police judgment of 27 October 1975, Series A no. 19, pp. 17-18).

40. The Court does not, however, accept the view expressed by the minority in the Commission who describe the phrase "for the protection of his interests" as redundant. These words, clearly denoting purpose, show that the Convention safeguards freedom to protect the occupational interests of trade union members by trade union action, the conduct and development of which the Contracting States must both permit and make possible. In the opinion of the Court, it follows that the members of a trade union have a right, in order to protect their interests, that the trade union should be heard. Article 11 para. 1 (art. 11-1) certainly leaves each State a free choice of the means to be used towards this end. While the concluding of collective agreements is one of these means, there are others. What the Convention requires is that under national law trade unions should be enabled, in conditions not at variance with Article 11 (art. 11), to strive for the protection of their members' interests (paragraph 39 of the above-cited judgment of 27 October 1975, Series A no. 19, p. 18).

41. No-one disputes the fact that the applicant union can engage in various kinds of activity vis-à-vis the Government. It is open to it, for instance, to present claims, to make representations for the protection of the interests of its members or certain of them, and to negotiate with the Office.

Nor does the applicant union in any way allege that the steps it takes are ignored by the Government. In these circumstances and in the light of the two foregoing paragraphs, the fact alone that the Office has in principle refused during the past few years to enter into collective agreements with the applicant union does not constitute a breach of Article 11 para. 1 (art. 11-1) considered on its own.

42. As concerns the alleged infringement of personal freedom to join or remain a member of the applicant union, the Court notes that the employees in question of the Swedish State Railways retain this freedom as of right, notwithstanding the conduct of the Office. It may be the fact that the stagnation or fall in the membership of the Swedish Engine Drivers' Union is to be explained at least in part, as the applicant contends, by the disadvantage the applicant is placed at compared with trade unions enjoying a more favourable position. It may be the fact too that this state of affairs is capable of diminishing the usefulness and practical value of belonging to the applicant union. However, it is brought about by the Office's general policy of restricting the number of organisations with which collective agreements are to be concluded. This policy is not on its own incompatible with trade union freedom; the steps taken to implement it escape supervision by the Court provided that they do not contravene Articles 11 and 14 (art. 14+11) read in conjunction.

43. Having thus established no infringement of a right guaranteed by paragraph 1 of Article 11 (art. 11-1), the Court is not called upon to have regard to paragraph 2 (art. 11-2), on which in any case the Government stated it did not rely.

II. AS TO THE ALLEGED VIOLATION OF ARTICLES 11 AND 14 (art. 14+11), TAKEN TOGETHER

44. Article 14 (art. 14) is worded as follows: "The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

45. Despite finding no breach of Article 11 (art. 11), the Court must ascertain whether the differences in treatment at issue comply with Articles 11 and 14 (art. 14+11) taken together. No doubt the concluding of collective agreements is in principle left by Article 11 para. 1 (art. 11-1) to the discretion of the Contracting States, but in the present circumstances it is linked to the exercise of a right guaranteed by the said provision as herein interpreted by the Court at paragraph 40, namely the freedom to protect the occupational interests of trade union members by trade union action. The Swedish State has in fact selected the concluding of collective agreements as one of the means of making possible the conduct and development of

such action by trade unions in both the public and private sectors. Accordingly, Article 14 (art. 14) is pertinent in the present context. In connection with both this question and the criteria to be adhered to, the Court refers to the judgments it delivered in the "Linguistic" case (23 July 1968, Series A no. 6, pp. 33-35, paras. 9-10) and, subsequently, in the National Union of Belgian Police case (27 October 1975, Series A no. 19, pp. 19-20, paras. 44-47).

46. The applicant union complains in the first place of the Office declining to enter into collective agreements with it despite frequently doing so with the large trade union federations.

This policy on the part of the Office unquestionably results in several inequalities of treatment to the prejudice of the "independent" unions such as the applicant.

The explanation of this policy is nonetheless to be found in a circumstance of fact relied on in argument by the Government and which the Court cannot ignore: the high degree of centralisation achieved within the Swedish trade union movement. In consequence of this state of affairs, the Office prefers as a general rule to sign collective agreements only with the most representative organisations; it is anxious not to find itself faced with an excessive number of negotiating partners, in order to avoid dissipating its efforts and to arrive more easily at a concrete result. The Court deems this aim to be legitimate and it has no reason to think that the Swedish State had other and ill-intentioned designs in the matter. The Court notes in this connection that within one of the federations with which the Office concludes collective agreements, namely the SF, there exists a Railwaymen's Section organising 75% to 80% of engine drivers and, accordingly, more representative than the applicant union.

47. The applicant union stresses in the second place that the Office sometimes consents to deal with independent unions, such as the one representing forestry workers. The Government's reply was, *inter alia*, that these latter organisations pursue their activities in sectors where the large federations are absent. Having regard to this circumstance of fact, the attitude of the Office appears to the Court to be reasonable and objective. In adopting it, the Office is not exceeding the power of appreciation left to the Swedish State.

48. Furthermore, the Court does not consider that the principle of proportionality, as defined in the two previously cited judgments, has been offended in the present case.

III. AS TO THE ALLEGED VIOLATION OF ARTICLE 13 (art. 13)

49. According to Article 13 (art. 13), "Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective

remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

50. The Court notes that Swedish legislation offered the applicant union a remedy of which, moreover, the union had availed itself, namely the institution of proceedings before the Labour Court. The claim of the applicant union was no doubt rejected, but this fact alone cannot establish that the remedy was ineffective. On the contrary, a reading of the judgment of 18 February 1972 reveals that the Labour Court carefully examined the complaints brought before it in the light of the legislation in force and not without taking into account Sweden's international undertakings. In addition, neither Article 13 (art. 13) nor the Convention in general lays down for the Contracting States any given manner for ensuring within their internal law the effective implementation of any of the provisions of the Convention.

The Court thus reaches a conclusion in line with the secondary argument advanced by the Government on the issue under consideration. In these circumstances, the Court, as in the *De Wilde, Ooms and Versyp* case (judgment of 18 June 1971, Series A no. 12, p. 46, para. 95), is not called upon to rule whether, as the Government contended in its main submission and the Commission affirmed at paragraph 98 of its report, Article 13 (art. 13) is applicable only when a right guaranteed by another Article of the Convention has been violated.

IV. AS TO THE APPLICATION OF ARTICLE 50 (art. 50)

51. The Court, having established no failure to comply with the requirements of the Convention, finds that in the present case the question of the application of Article 50 (art. 50) of the Convention does not arise.

FOR THESE REASONS, THE COURT,

Holds unanimously that there has been no breach of Article 11 (art. 11), or of Articles 11 and 14 (art. 14+11) taken together, or of Article 13 (art. 13).

Done in English and French, the French text being authentic, at the Human Rights Building, Strasbourg, this sixth day of February one thousand nine hundred and seventy-six.

Giorgio Balladore PALLIERI
President

Marc-André EISSEN
Registrar